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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/351,608	07/12/1999	MICHAEL GROBBEL	F-40358	9981

EXAMINER	
WACHTEL, ALEXIS A	

ART UNIT	PAPER NUMBER
1764	

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/351,608

Examiner

Alexis Wachtel

Applicant(s)

GROBBEL ET AL.

Art Unit

1764

244 19

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 32-36, 40, 41, 50 and 51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 32-36, 40, 41, 50, 51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Detailed Action

Response to Amendment

1. Applicant's amendment and accompanying Remarks filed 12-6-2002 and 12-20-2002 have been entered and carefully considered.

The amendment is insufficient to overcome the obviousness rejections of claims 32-36,40,41,50, but is sufficient to overcome the 112 2nd paragraph rejections of claims 36 and 50. Claim 51 was added for consideration.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 35 and 51 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 35 and 51, the phrase "at least some of the elements include fibers oriented in a preferred direction" does not describe what the preferred direction is. The Examiner interprets the preferred direction as any direction fibers can be oriented in.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 32, 33, 35, 40, 41, 50 and 51 are rejected under 35 U.S.C. 102(b) as being anticipated by US 4,413,030 to Tesch et al.

Tesch et al discloses, with reference to FIGS. 1 and 2, a nonwoven fibrous layer 7 composed of substantially ball-shaped yarns 8, which contain substantially spherically intermingled fibers 9; the non-woven fibrous layer 7 has therefore an irregular, for example, structured surface 11. By means of needle-processed fiber pieces 10, which may be part of the ball-shaped yarns 8, the fibrous layer 7 is connected to a carrier 12, for example made of fleece, so that a textile material 13 is obtained (Col 4, lines 25-33). With regards to claims 40 and 41, the fiber aggregate from which the substantially spherically intermingled fibers are composed may have a length, for example, from about 9mm to about 150mm (Col 9, lines 49-55). Regarding claim 33, it is inherent to consolidate by needling.

Said ball-shaped yarns may also be mixed with some other material or fibers, examples of which include felt pieces (Col 5, lines 10-15). Examiner notes that felt is a known sheet good, and pieces of felt incorporated into the ball shaped-yarns thusly satisfy claim 32. The fibrous material can be arranged in parallel rows on a carrier (Col 7, lines 56-61). With regards to claim 50, the nonwoven fibrous layer is needled to a carrier as shown above. Thus, the nonwoven fibrous layer is composed of needle-felt-like elements. The limitations of claim 35 and 51 do not patentably distinguish the claimed article over the relied on prior art. In particular, the article taught by Tesch et al teaches that the fiber elements are oriented in a preferred direction since the preferred direction is interpreted by the Examiner as being any direction.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 34 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,413,030 to Tesch et al (Tesch '030) in view of US 4,292,367 to Tesch (Tesch '367).

With regards to claim 36, Tesch '030 as set forth above fails to teach the claimed basis weight of the fibrous layer.

Tesch '367 is directed to floor coverings (Col 3, lines 30-35) and teaches a textile sheet material that includes a thread layer which is composed of individual endless threads or filaments (Col 2, lines 1-5). The endless threads are attached to a carrier by needling (Col 2, lines 32-35). The endless threads can be used to make patterns on the carrier (Col 3, lines 1-7). The endless threads may have, for example, a weight of 200 grams per square meter (Col 3, lines 61-64). In view of this teaching, it would have been obvious for one of ordinary skill in the art at the time the invention was made to have used a 200 gram per square meter basis weight for the fibrous nonwoven layer of Tesch '030 motivated by the desire to obtain a nonwoven layer having thick and easily visible patterns thereon in the shape of parallel rows on a carrier as disclosed above.

With regards to claim 34, Tesch '030 as set forth above fails to teach providing two plies of the non-woven fibrous layers needed to the carrier.

Tesch '367 teaches that a floor covering is known, which is composed of a textile layer, in which threads spun from individual fibers to form a pattern, this textile layer is deposited on a carrier made of fibrous material. The textile layer, composed of threads, is then covered with another fibrous layer which is active with respect to needle-punching and the fibrous layer is thereafter needled onto the carrier (Col 1, lines 18-25). In view of this teaching, it would have been obvious for one of ordinary skill in the art to have provided a second fibrous nonwoven layer disposed on top of a first fibrous nonwoven layer which in turn is disposed on a carrier of the floor covering of Tesch '030, wherein both fibrous nonwoven layers are subsequently needled, motivated by the desire to exploit a conventionally used and well known floor covering structural configuration.

Response to Arguments

8. With respects to claim 32, Applicant argues that Tesch et al do not disclose that at least some of the elements forming the surface layer are formed by dividing a feed material formed as a ribbon or a sheet, and the feed material is a nonwoven. However, Tesch et al plainly disclose the use of a fibrous nonwoven layer (2) that is composed of individual fiber aggregates (3). These fiber aggregates are initially separated from each other but are subsequently connected by needle processing (Col 3, lines 59-66). The Examiner notes that the method steps of "dividing a feed material" do not patentably distinguish the claimed invention over the prior art since the structure implied by "dividing a feed material" is provided by the fiber aggregates as disclosed by Tesch et al.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Application/Control Number: 09/351,608
Art Unit: 1764

Page 7

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alex Wachtel whose telephone number is 571-272-1455. The examiner can normally be reached on 10:30am to 6:30pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Glenn Caldarola, can be reached at (571)-272-1444. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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